

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:</p> <p>IOWA DEPARTMENT OF JUSTICE, OFFICE OF CONSUMER ADVOCATE,</p> <p style="text-align:right">Complainant,</p> <p style="text-align:center">v.</p> <p>AMERICA'S TELE-NETWORK CORP. and JOHN W. LITTLE, President of America's Tele-Network Corp.,</p> <p style="text-align:right">Respondents</p>	<p style="text-align:right">DOCKET NO. FCU-00-6</p>
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**PROPOSED DECISION AND ORDER**

(Issued August 1, 2001)

APPEARANCES:

MR. JACQUES D. SCHIRA, attorney at law, 218 Sixth Avenue, Suite 502, Des Moines, Iowa 50309, appearing on behalf of America's Tele-Network Corp. and John W. Little, President of America's Tele-Network Corp.

MR. KIRK SALZMANN and MR. CHARLES HELEIN, attorneys at law, The Helein Law Group, P.C., 8180 Greensboro Drive, Suite 700, McLean, Virginia 22102, appearing on behalf of America's Tele-Network Corp. and John W. Little, President of America's Tele-Network Corp.

MR. JOHN W. LITTLE, pro se, America's Tele-Network Corp., P.O. Box 768250, Roswell, Georgia 30076, appearing on behalf of America's Tele-Network Corp. and John W. Little, President of America's Tele-Network Corp.

MS. JENNIFER EASLER, attorney at law, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Iowa Department of Justice, Office of Consumer Advocate.

### **STATEMENT OF THE CASE**

On September 13, 2000, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) requested formal complaint proceedings be established against America's Tele-Network Corp. (AT-N) and its president, John W. Little, following completion of its discovery. The complaint was filed pursuant to Iowa Code §§ 476.3(1) and 476.103 (2001) and 199 IAC 6.8(2) and 22.23. Throughout this decision, the term "AT-N" will be used to include both AT-N and John W. Little.

In Count I of the complaint, the Consumer Advocate alleged that AT-N had repeatedly failed to respond to Utilities Board (Board) complaint inquiries in a timely manner. The Consumer Advocate alleged the violations constituted a pattern of misconduct for which the Board should order the following remedies: (1) the assessment of civil penalties in the maximum allowable amount for each of the 26 alleged violations; (2) the issuance of an order prohibiting any service provider from billing charges to residents of Iowa on behalf of AT-N; and (3) the issuance of an order prohibiting certificated local exchange providers in Iowa from providing exchange access services to AT-N.

In Count II of the complaint, the Consumer Advocate alleged that AT-N repeatedly caused unauthorized switches of long distance telecommunications providers (commonly known as "slamming") to Iowa residents. The Consumer Advocate alleged the violations constituted a pattern of misconduct for which the Board should order the following remedies: (1) the assessment of civil penalties in the maximum allowable amount for each of 29 alleged violations; (2) an assessment

of damages for the each of the 29 alleged violations; (3) the issuance of an order prohibiting any service provider from billing charges to residents of Iowa on behalf of AT-N; and (4) the issuance of an order prohibiting certificated local exchange service providers from providing exchange access services to AT-N.

AT-N filed an appearance, motion for admission, and an answer on October 18, 2000. In the answer, AT-N either denied each of the allegations or claimed that they were barred, and alleged all customers had been provided full satisfaction for any alleged monetary harm. AT-N requested that the Board deny the request for formal complaint proceedings, or refuse to accept the allegations as true without instituting formal proceedings, conducting a hearing, and proving that AT-N violated any provision of the Iowa Code.

In an order issued November 20, 2000, the Board docketed the case and established a procedural schedule.

On December 1, 2000, the Consumer Advocate filed prepared direct testimony of Mr. Ted Drennan and Exhibits 1 and 2. In his testimony, Mr. Drennan referred to eight additional complaint cases not named in the original request for formal complaint proceedings.

On December 15, 2000, AT-N filed prepared rebuttal testimony of Mr. John W. Little and exhibits, an objection and motion to strike portions of the Drennan testimony and exhibits, and a motion for: 1) leave to depose each of the customers whose complaints are the subject of the formal complaint proceedings; 2) issuance

of subpoenas duces tecum for each of the customers to secure their attendance at the depositions and the hearing; and 3) a continuance.

On December 19, 2000, the Board issued an order assigning this case to an administrative law judge.

On December 26, 2000, the Consumer Advocate filed a response to AT-N's objection and resistance to the motion to strike. On December 28, 2000, the Consumer Advocate filed a resistance to the motion to depose, issue subpoenas, and for a continuance. It also filed an application for separate adjudication of law points on December 29, 2000.

The undersigned issued an order on January 4, 2001, granting a continuance, requesting information from the parties, and partially ruling on the motion to strike. The motion to strike was denied as to the eight additional complaints referred to in the Drennan testimony, and those complaints were added to the request for formal proceedings.

On January 22, 2001, the Consumer Advocate filed a response to the order requesting additional information, and the responsive testimony of Mr. Drennan. The Consumer Advocate amended Mr. Drennan's testimony on January 23, 2001.

AT-N filed a resistance to the application for separate adjudication of law points and an answer brief on January 22, 2001. In its resistance and answer brief, AT-N asserted it had not received notice of the informal complaints that form the basis for this formal complaint case. This assertion was contrary to the evidence in the record in all but two of the informal complaint files. (February 26, 2001 Order,

pp. 16–18). The answer brief contained a combination of legal argument and alleged factual information that should have been presented as prefiled testimony.

On February 26, 2001, the undersigned issued an order that amended the procedural schedule and set a new hearing date, ordered AT-N to re-file its answers to questions so that factual information would be presented as prefiled testimony and legal argument would be presented in a separate brief, and denied the motion to strike as to other jurisdiction slamming complaints and granted it as to the FCC non-contribution case. The order further denied the application for separate adjudication of law points, took official notice of the underlying informal complaint files in the case, denied the request for subpoenas duces tecum, and granted AT-N's request to depose the customers in the underlying informal complaint files with restrictions. The order required AT-N to submit prefiled testimony and documentary evidence regarding the factors in Iowa Code §§ 476.103(4)(b) and (5) (2001). AT-N was ordered to provide evidence regarding "the size of the service provider" that included: 1) when AT-N started doing business in Iowa; 2) the number of customers it has in Iowa; 3) AT-N's gross revenues from Iowa customers in each year it has been doing business in Iowa; 4) corporate gross revenues, including subsidiaries and including all states in which it does business; and 5) the most recent annual report. AT-N was also ordered to provide evidence showing the dates it received the complaints and the dates it reimbursed the customers to the extent the evidence was not already in the record, evidence showing when and how it complied with 199 IAC 22.23(2)"c", and the verification tapes for the eight cases referred to in Mr. Drennan's testimony

and for any other cases on the list in which no tape was previously provided. The Consumer Advocate was ordered to provide any evidence regarding the issues in Iowa Code §§ 476.103(4)(b) and (5) not previously filed. AT-N has never complied with this order.

On March 19, 2001, Kirk Salzmänn and Jacques D. Schira, attorneys for AT-N, (the petitioners), filed a motion to withdraw appearance and representation as counsel. In support of the motion, the petitioners stated they had learned AT-N's telephone and facsimile lines had been disconnected preventing direct communication, that AT-N had failed to respond to electronic messages (e-mail) and had failed to provide client authorization as well as the needed involvement in the preparation of its defense. Petitioners stated that AT-N's "unresponsiveness, lack of attention and inability to substantially fulfill its obligations to Petitioners has made it unreasonably difficult for Petitioners to carry out the duties of their employment and justifies withdrawal pursuant to Iowa Code of Professional Responsibility DR2-110(c)(1)." They requested that the Board issue an order permitting them to withdraw from further representation of AT-N and John W. Little. Mr. Salzmänn's sworn statement attached to the motion stated that AT-N and John W. Little "have refused to cooperate with us and have been unresponsive to counsel inquiries making it unreasonably difficult for us to carry out our duties as counsel." With the motion was a copy of a letter dated March 9, 2001 from the attorneys to AT-N regarding the need to present a defense, asking for a response, and warning they would file a motion to withdraw if AT-N did not respond. Also accompanying the

motion was a copy of a certified mail return receipt card alleged to have accompanied the March 9<sup>th</sup> letter. The return receipt card was unsigned.

On March 26, 2001, the petitioners filed a statement that said counsel was unable to comply with the filing deadlines contained in the February 26, 2001 order because of non-cooperation and lack of authorization by their client.

On April 2, 2001, the Consumer Advocate filed a conditional objection to the motion to withdraw. In the motion, the Consumer Advocate stated it was unable to assess the validity of counsel's claims, pointed out that the Helein Law Group continued to represent AT-N before the FCC and possibly in other state proceedings, and attached a copy of the FCC order issued against AT-N on March 13, 2001.

A telephone conference call regarding the motion, statement, and conditional objection was held on Thursday, April 5, 2001. Participating in the conference call were: Mr. Kirk Salzmänn, Mr. Charles Helein, and Ms. Loubna Haddad, all of the Helein Law Group, P.C., attorneys for AT-N, and Ms. Jennifer Easler, attorney for the Consumer Advocate. Mr. Jacques Schira and Mr. John W. Little did not participate. During the conference call, Mr. Helein made statements regarding AT-N that were significantly different from the statements made in the motion to withdraw.

Mr. Helein stated that his client was overwhelmed by the number of enforcement actions against it, was getting out of the residential long distance market, and was closing down its operations. He stated the company had no money, did not want to participate in this Iowa case, and had instructed its attorneys not to participate in this Iowa case. He stated the company had not marketed since

October 2000 and would not operate in Iowa. Further details of Mr. Helein's statements are discussed below in the "Preliminary Matters" section.

At the conference call, the Consumer Advocate expressed the concern that AT-N's counsel's withdrawal from representation in this case was selective and counsel continues to represent AT-N in other jurisdictions. The Consumer Advocate also stated there was nothing in the record to substantiate the statements made by counsel. Ms. Easler stated there is nothing in the record showing that AT-N has withdrawn from doing business in Iowa and nothing regarding AT-N's financial situation. She pointed out that until recently AT-N had requested the ability to conduct discovery, and now counsel has stated that AT-N has changed its mind. She questioned whether AT-N had authorized the answer brief filed by AT-N on January 22, 2001.

On April 16, 2001, the undersigned issued an order requiring AT-N's attorneys to file a statement with supporting evidence and amend their motion to withdraw to conform to the statements made during the April 5, 2001 conference call. The order notified the parties that regardless of whether the motion to withdraw was granted, the procedural schedule and hearing date remained in effect, AT-N was bound to comply with the order, and no further continuances would be granted. The order also stated AT-N was currently in default of the requirement to re-file its answers to questions (separated prefiled testimony and brief) by March 26, 2001. The order advised the parties that since AT-N's counsel was properly served with notice of the



hearing and counsel represented AT-N at the time of service, AT-N was properly served with notice of the hearing.

On April 20, 2001, AT-N's counsel filed a statement in support of their motion to withdraw and an amended motion to withdraw. The statement essentially conformed to the statements made by AT-N's attorneys during the April 5<sup>th</sup> conference call. AT-N's attorneys did not comply with the requirement of the April 16<sup>th</sup> order to submit evidence in support of their statement. With the statement, AT-N's attorneys filed a copy of a certified mail return receipt card they alleged was a copy of the return receipt card attached to counsel's March 9, 2001 letter signed by AT-N as having received the letter. The return receipt card is not the same card that was attached to the original motion to withdraw that was also alleged to be the card that accompanied the March 9<sup>th</sup> letter. Further discussion of this statement is contained below in the "Preliminary Matters" section.

On May 2, 2001, the Consumer Advocate filed a response to the amended motion to withdraw and a withdrawal of its objection.

On May 8, 2001, the undersigned issued an order regarding the motion to withdraw. The order required AT-N's attorneys to explain why the two return receipt cards allegedly accompanying the March 9<sup>th</sup> letter were not the same, and to present proof that AT-N received the March 9, 2001 letter. AT-N's attorneys have never provided an explanation regarding the two return receipt cards. The order denied the motion to withdraw until one of three things occurred: 1) AT-N's attorneys complied with the April 16<sup>th</sup> order; 2) AT-N's new representative filed an appearance

accompanied by an affidavit of AT-N and by any filings for which AT-N was already in default; or 3) AT-N filed an affidavit stating it had discharged the Helein Law Group from representing it in this case, it did not intend to pursue a defense in this case, that it would accept the final decision of this agency in this case, and that included a current address for AT-N/John W. Little.

Also on May 8, 2001, Mr. Kirk Salzmänn, one of AT-N's attorneys, filed a letter stating he had resigned from the Helein Law Group and that all inquiries regarding this case were to be addressed to Mr. Charles Helein.

On May 15, 2001, the Consumer Advocate filed additional testimony of Mr. Fasil Kebede and OCA Exhibit 3. Pursuant to a protective agreement signed by the parties, the Consumer Advocate filed its testimony and exhibits as temporarily confidential for a period of 14 days to allow AT-N an opportunity to seek a protective order from the Board or a court for more permanent confidential treatment.

In an order issued May 17, 2001, the parties were ordered to provide certain information. In addition, if AT-N claimed the OCA's testimony and exhibits filed May 15<sup>th</sup> should be held permanently confidential, it was ordered to file any request for confidential treatment no later than Tuesday, May 29, 2001. The order stated that if no such request was received by May 29<sup>th</sup>, the materials would be considered public documents and would be treated as such.

AT-N did not file a request for confidential treatment, and as of May 30, 2001, the financial materials filed May 15, 2001, were considered public documents.

On May 24, 2001, the Consumer Advocate filed testimony of Mr. Fasil Kebede, OCA Exhibit 4, and a request for permission to offer additional testimony. In the request, the Consumer Advocate asked for permission to offer testimony at the hearing regarding Utilities Board custom and practice regarding mailing of complaints and proposed resolutions, and contents of the records of the informal complaint files at issue in this case. On June 5, 2001, the Consumer Advocate amended its request and asked permission to offer an affidavit of Board personnel regarding custom and practice regarding mailing of complaints and proposed resolutions to respondents, and the maintenance and contents of complaint files. An order issued June 7, 2001 granted the request, ordered the Consumer Advocate to provide a copy of the proposed affidavit to AT-N's counsel, and stated admissibility would be ruled on at the hearing.

On June 7, 2001, Mr. John W. Little filed an affidavit pursuant to the May 8, 2001 order. In the affidavit, Mr. Little stated he was the president of AT-N, AT-N is in the process of winding up its corporate activities, and, as such, does not have a current business address. He stated AT-N was receiving business correspondence at a post office box in Roswell, Georgia and provided the address. He stated AT-N had not authorized the Helein Law Group to continue its representation of AT-N in this case, that per the March 9, 2001, letter, AT-N was aware of its options and "under AT-N's present circumstances, does not intend on pursuing this matter further at this point." Mr. Little stated he understands the Board will issue a decision in this matter.

A complete list of the prehearing filings and orders is attached to this proposed decision.

The hearing in this case was held beginning at 10 a.m. on June 12, 2001, in the hearing room at the Board office, 350 Maple Street, Des Moines, Iowa.

Ms. Jennifer Easler was present representing the Consumer Advocate. Also present for the Consumer Advocate was Mr. Fasil Kebede. No one was present on behalf of AT-N.

Iowa Code § 17A.12(3) (2001) provides that if a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision or proceed with the hearing and make a decision in the absence of the party. AT-N was properly served with notice. In his June 7, 2001, affidavit, Mr. Little stated AT-N had not authorized the Helein Law Group to continue representing AT-N in this case, and that AT-N did not intend to pursue this matter further at this point. On June 11, 2001, Jean Mathis, secretary to the undersigned, received a call from Ms. Loubna Haddad at the Helein Law Group stating that no one from the firm would attend the hearing. Therefore, pursuant to Iowa Code § 17A.12(3), the hearing was held and this proposed decision is being issued.

At the hearing, Mr. Fasil Kebede testified on behalf of the Consumer Advocate, and adopted the prefiled testimony of Mr. Ted Drennan as his own. OCA Exhibits 1–8 were admitted. A list of the exhibits is attached to this proposed decision.

On June 14, 2001, as directed at the hearing, the Consumer Advocate filed amended OCA Exhibit 7, OCA Exhibit 8, and a copy of the FCC's decision in Coleman Enterprises, Inc. d/b/a Local Long Distance, Inc., "Order on Reconsiderations" FCC No. 01-154, File No. ENF-99-09 (Released May 8, 2001). Also as directed at the hearing, the Consumer Advocate filed verification tapes for cases C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, and C-00-445 on July 19, 2001.

## **PRELIMINARY MATTERS**

### **Motion to Withdraw as Counsel**

On March 19, 2001, Kirk Salzman and Jacques D. Schira, attorneys for AT-N, (the Petitioners), filed a Motion to Withdraw Appearance and Representation as Counsel. Petitioners stated that AT-N's "unresponsiveness, lack of attention and inability to substantially fulfill its obligations to Petitioners has made it unreasonably difficult for Petitioners to carry out the duties of their employment and justifies withdrawal pursuant to Iowa Code of Professional Responsibility DR2-110(c)(1)." They requested that the Board issue an order permitting them to withdraw from further representation of AT-N and John W. Little. They attached a copy of a letter dated March 9, 2001, they had sent informing AT-N of the potential for withdrawal, and a certified mail return receipt card that allegedly accompanied the letter.

On March 26, 2001, the Petitioners filed a statement that stated counsel was unable to comply with the filing deadlines contained in the February 26, 2001 order

because they had been unable to obtain the necessary information and cooperation from their client.

On April 2, 2001, the Consumer Advocate filed a Conditional Objection to Motion to Withdraw Appearance and Representation. In its conditional objection, the Consumer Advocate stated it was unable to assess the validity of counsel's claims in the motion to withdraw, and that the Helein Law Group continued to represent AT-N before the FCC and possibly before other states. The Consumer Advocate requested that counsel be required to provide proof that they had withdrawn their representation in other jurisdictions.

A telephone conference call regarding the motion, statement, and conditioned objection was held on Thursday, April 5, 2001. At the conference call, the attorneys for AT-N changed their position and stated their client was overwhelmed by the number of enforcement actions against it, was getting out of the residential long distance market, and was closing down its operations. They stated the company had no money, did not want to participate in this Iowa case, and had instructed its attorneys not to participate in this Iowa case. They stated the company had not marketed since October 2000 and would not operate in Iowa. Mr. Helein stated he had not filed a motion to withdraw his representation in the FCC case or any other state. AT-N's attorneys provided AT-N's last known address, telephone number, fax number, and email address, but stated to the best of their knowledge the address was no longer valid. They stated they believed AT-N was in the process of shutting down its offices in Georgia.

On April 16, 2001, the undersigned issued an order that stated there was nothing in the record to support any of the statements made during the telephone conference call by AT-N's attorneys other than the FCC order issued March 13, 2001 against AT-N, and the letter AT-N's attorneys wrote to AT-N on March 9, 2001. The order required AT-N's attorneys to file a statement and amend their motion to withdraw to conform to the statements made during the April 5, 2001 conference call. The order required the attorneys' statement to include a number of specific items, including the current address of their client, and a copy of the return receipt card attached to counsel's March 9, 2001 letter signed by AT-N as having received the letter. It also required evidence to support the statements made by counsel.

On April 20, 2001, AT-N's counsel filed a Statement in Support of Motion to Withdraw and an Amended Motion to Withdraw. The statement essentially conformed to the statements made by AT-N's attorneys during the April 5<sup>th</sup> conference call. AT-N's attorneys asserted in the statement that they had not changed their position, and that their statements at the conference call "served only to clarify and elaborate on their position as stated in their Motion to Withdraw Appearance and Representation as Counsel." The attorneys amended their Motion to Withdraw to include Iowa Code of Professional Responsibility DR 2-110(B)(4) as well as the previously relied upon ground of DR 2-110(C)(1)(d).

Iowa Code of Professional Responsibility DR 2-110(B)(4) provides that:

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from

employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

...

(4) The lawyer is discharged by the client.

Iowa Code of Professional Responsibility DR 2-110(C)(1)(d) provides that:

(C) Permissive withdrawal.

**If DR 2-110(B) is not applicable**, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client:

...

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out the employment effectively.

Although the April 16<sup>th</sup> order required AT-N's attorneys to submit evidence in support of their statement, they did not do so. AT-N's attorneys did not provide a current address or other contact information for their client despite having been ordered to do so. When asked how Mr. Helein contacts AT-N with regard to the FCC case, the attorneys answered in their statement, "Mr. Helein has had long-standing instructions from AT-N with regard to the FCC case and, accordingly, there is no current need to contact AT-N with regard to that matter."

On May 2, 2001, the Consumer Advocate filed a Response withdrawing its objection to the motion to withdraw.

Iowa Code of Professional Responsibility DR 2-110(A)(2) provides that "a lawyer shall not withdraw from employment until reasonable steps have been taken to avoid foreseeable prejudice to the rights of the client ... ."



On March 19, 2001, attached to their original Motion to Withdraw, AT-N's lawyers filed a copy of a letter addressed to AT-N dated March 9, 2001, informing AT-N of the necessity to prepare a defense, that AT-N's failure to respond to Mr. Helein's inquiries was making it impossible to present a defense, and that the law firm would file a motion to withdraw in the Iowa case unless AT-N responded within five days. The letter indicates it was sent via certified return receipt mail. Attached to the motion is a sworn statement of Mr. Salzmann that reasonable notice of their intent to seek permission to withdraw was given to AT-N via certified letter. Attached to the letter is a copy of a return receipt card that is not signed as received by AT-N. The return receipt card is addressed to "Mr. John W. Little" and has article number 7099 3400 0011 6905 4996 written at the bottom of the card.

Because the return receipt card was unsigned, AT-N's lawyers were required to submit a copy of the return receipt card attached to counsel's March 9, 2001 letter signed by AT-N as having received the letter. On April 20, 2001, attached to the attorneys' Statement in Support of the Motion to Withdraw, is a copy of a return receipt card that Mr. Salzmann stated is a copy of the return receipt card attached to counsel's March 9, 2001 letter signed by AT-N as having received the letter. The return receipt card is not the same as that attached to the original motion. The card is addressed to "John Little", and has article number 2 489 615 023 written at the bottom of the card.

The fact that both cards were presented as the certified mail return receipt card attached to the March 9, 2001 letter, but they do not match, meant there was no

proof in the record that AT-N received the March 9, 2001 letter. AT-N's attorneys were ordered to explain why the two return receipt cards are not the same, and present proof that AT-N received the March 9, 2001 letter.

Ordinarily, when an attorney files a statement saying the client has discharged the attorney and instructed him or her not to defend, a motion to withdraw would be granted so long as there is sufficient proof the client was informed the attorney was withdrawing and an appearance by a new representative was filed. The new representative could be either another attorney or a corporate officer/employee of the client. The appearance must include the representative's current name and address. 199 IAC 2.2(15), 7.2(1).

Several things occurred in this case that made it far from ordinary. First, until its attorneys filed the motion to withdraw, AT-N vigorously defended this case. It filed responses, motions, prepared testimony, and requested to depose and subpoena the complainants in the underlying informal complaints. Second, in its resistance and answer brief filed January 22, 2001, AT-N made statements contrary to evidence already in the record. Third, AT-N's attorneys first asserted in their motion to withdraw that their client was unresponsive, failed to provide client authorization and needed involvement, and that Iowa Code of Professional Responsibility DR2-110(C)(1)(d) provided grounds for withdrawal. Then, in their amended motion to withdraw, the attorneys asserted that their client was shutting down its business, had discharged the attorneys in this case only, had instructed its attorneys not to defend the Iowa case, and that Iowa Code of Professional Responsibility

DR2-110(B)(4) provided grounds for withdrawal, while asserting that they had not changed their position. Fourth, AT-N's attorneys failed to provide a current address and other contact information for their client despite having been ordered to do so. Fifth, the Helein Group has not filed motions to withdraw in any other jurisdiction and Mr. Helein continues to represent AT-N in an active case before the FCC while alleging he has no current need to contact his client. Sixth, AT-N's attorneys did not provide evidence to support their statement filed with the amended motion to withdraw despite having been ordered to do so. Seventh, AT-N's attorneys submitted two different certified mail return receipt cards that they asserted were attached to the March 9<sup>th</sup> letter. Finally, no appearance by a new representative (either an attorney or client corporate officer/employee) with a current address was filed.

Because of these unusual circumstances, in an order dated May 8, 2001, the motion to withdraw was denied until one of three things occurred:

- 1) AT-N's attorneys complied with the April 16<sup>th</sup> order and filed evidence to support certain portions of their statement, their client's current address, and an explanation regarding the return receipt cards with proof AT-N received the March 9<sup>th</sup> letter;
- 2) AT-N's new representative filed an appearance that complied with 199 IAC 2.2(15) and 7.2(1). The appearance had to include the name and current address of the representative and be accompanied by an affidavit of AT-N that it

intended to defend in this case and would comply with the procedural schedule, and by any filings for which AT-N was already in default; or

3) AT-N filed an affidavit stating it had discharged the Helein Law Group from representing it in this case, it did not intend to pursue a defense in this case, and it would accept the final decision of this agency in this case. This affidavit was required to include a current address for AT-N/John W. Little.

On June 7, 2001, Mr. John W. Little filed an affidavit stating that: (1) he is the president of AT-N; (2) AT-N is in the process of winding up its corporate activities and is receiving business correspondence at the address provided; (3) AT-N has not authorized the Helein Law Group to continue its representation in this docket; (4) AT-N is aware of its options per the March 9<sup>th</sup> letter from Mr. Helein and does not intend to pursue this matter further at this point; and (5) AT-N understands the Board will issue a decision in this case.

At the hearing, the Consumer Advocate had no objections to the granting of the motion to withdraw. The affidavit filed by Mr. Little on June 7, 2001, essentially complies with the requirements of the May 8<sup>th</sup> order, except that Mr. Little stated he understands the Board will issue a decision rather than that he would accept it. According to the affidavit, AT-N has not authorized the Helein Law Group to continue its representation of AT-N in this docket. AT-N's attorneys informed AT-N of its options and potential consequences in the March 9<sup>th</sup> letter.

Therefore, the motion to withdraw should be granted. Iowa Code of Professional Responsibility DR 2-110(B)(4).

### **Treatment of AT-N's Prefiled Testimony and Exhibits**

AT-N filed prefiled testimony of Mr. John W. Little and exhibits (Schedules A-F) on December 15, 2000. AT-N also filed an answer brief on January 22, 2001 that included responses to the questions asked in the January 4, 2001 order. The answer brief contains a combination of legal argument and alleged factual information. On February 26, 2001, AT-N was ordered to separate the legal argument from the factual information and refile two separate documents: 1) the factual information as prefiled testimony; and 2) the legal argument presented in a brief. AT-N has never complied with this order.

The question presented is how to treat the prefiled testimony and alleged facts in the answer brief, since there was no witness present at the hearing for AT-N who could have been sworn in and subject to cross-examination. Iowa Code § 17A.14(3) (2001) and due process require that witnesses be subject to cross-examination. Goldberg v. Kelly, 397 U.S. 254 (1970); Carr v. Iowa Employment Security Com'n, 256 N.W. 2d 211 (Iowa 1977). Rule 199 IAC § 7.7(2) requires that witnesses be examined under oath or affirmation. At the hearing, the Consumer Advocate took the position that the prefiled testimony and answer brief should be stricken because it was deprived of the opportunity to cross-examine witnesses for AT-N.

AT-N's December 15, 2000 prefiled testimony of Mr. John W. Little and exhibits (Schedules A–F) and any alleged factual information in the answer brief filed January 22, 2001 may not be used in support of AT-N. Iowa Code § 17A.14(3) (2001); Goldberg v. Kelly, 397 U.S. 254 (1970); Carr v. Iowa Employment Security

Com'n, 256 N.W. 2d 211 (Iowa 1977); 199 IAC § 7.7(2). However, the information may be used against AT-N, such as in assessments of AT-N's credibility and culpability. Therefore, the evidence will not be stricken from the record, but will not be used to support AT-N, its positions, its allegations, or its arguments.

## **DISCUSSION OF THE EVIDENCE AND ANALYSIS**

### **A. The Violations**

America's Tele-Network Corp. (AT-N) is a provider of interexchange telecommunications service located in Roswell, Georgia. (OCA Exhibit 6; 6/7/01 affidavit of John W. Little) John W. Little is the president and sole officer, director, and shareholder of AT-N. (Testimony of Mr. Kebede, p. 90)

During the spring, summer, and fall of 2000, the Customer Service section of the Board received numerous complaints from Iowa customers regarding long distance services provided by AT-N. (Testimony of Mr. Kebede; informal complaint files C-00-95, C-00-112, C-00-115, C-00-137, C-00-141, C-00-150, C-00-151, C-00-153, C-00-158, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-238, C-00-248, C-00-253, C-00-255, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, C-00-340, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458). Almost all the complaints alleged AT-N had changed the customer's long distance telecommunications provider without the customer's authorization, that is, that they had been "slammed." (Informal complaint files C-00-95, C-00-112,

C-00-115, C-00-137, C-00-150, C-00-151, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-238, C-00-248, C-00-253, C-00-255, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, C-00-340, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458) Some complaints alleged AT-N had billed for calls not made, billed for more minutes than the actual calls, charged more than the rate promised, misrepresented itself as AT & T or Sprint, did not send a \$100 check for switching as promised, did not provide a number that could be reached for customer service, did not switch the customer back when the customer requested, refused to refund charges arising from the slamming when requested by the customer, slammed the customer multiple times, and treated the customer poorly, delayed answering, or did not answer at all when the customer attempted to call AT-N customer service. (Informal complaint files C-00-112, C-00-115, C-00-137, C-00-141, C-00-153, C-00-158, C-00-183, C-00-188, C-00-192, C-00-211, C-00-217, C-00-219, C-00-238, C-00-253, C-00-320, C-00-336, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, and C-00-458) Some customers said they told AT-N they were not switching, but that AT-N could send literature, and AT-N switched them. (Informal complaint files C-00-115, C-00-182, C-00-192, C-00-211, C-00-288, and C-00-368)

The procedures for handling slamming complaints are contained at 199 IAC 6.8. Each of the above complaints was the subject of an informal complaint proceeding as outlined in rule 6.8. In each proceeding, Board staff sent a letter

enclosing a copy of the complaint pursuant to rules 6.8(1) and 6.8(2), and in every case other than C-00-340, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458, the informal complaint files contain a letter from AT-N stating it received the complaint and providing its response. (Testimony of Mr. Kebede; informal complaint files C-00-95, C-00-112, C-00-115, C-00-137, C-00-141, C-00-150, C-00-151, C-00-153, C-00-158, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-238, C-00-248, C-00-253, C-00-255, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, C-00-340, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458).

In C-00-340, Board staff sent a copy of the complaint to ILD Telecommunications, Inc.<sup>1</sup> (ILD), and not to AT-N. (informal complaint file C-00-340) Although ILD responded and said it would forward the complaint to AT-N, there is no response from AT-N in the file to indicate it received the complaint. (informal complaint file C-00-340)

For each slamming complaint, AT-N was required to file a response within ten days of the date the complaint was forwarded. 199 IAC 6.8(2). This means the response had to have been **received** by the Board within ten days of the date the complaint was forwarded. 199 IAC 6.8(2). The response to the slamming complaints had to include proof of verification of the customer's authorization for a

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<sup>1</sup> ILD Telecommunications, Inc. is a billing agent for AT-N.



change in service or a statement that AT-N did not have such proof. 199 IAC 6.8(2). For all other kinds of complaints, AT-N had to file a response within 20 days of the date on which the complaint was mailed to the utility. 199 IAC 6.3(3). The non-slamming complaints were C-00-141, C-00-153, and C-00-158.

AT-N filed a responsive letter and tape it alleged showed proof of authorization within the required ten-day period in case C-00-112. (Testimony of Mr. Kebede p. 52; informal complaint file C-00-112)

AT-N filed untimely responses in the following cases<sup>2</sup>: C-00-95, C-00-115, C-00-137, C-00-141, C-00-150, C-00-151, C-00-153, C-00-158, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-238, C-00-248, C-00-253, C-00-255, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, and C-00-336. (Testimony of Mr. Kebede pp. 53-54; informal complaint files C-00-95, C-00-115, C-00-137, C-00-141, C-00-150, C-00-151, C-00-153, C-00-158, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-238, C-00-248, C-00-253, C-00-255, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, and C-00-336)

Tapes allegedly showing proof of authorization for the switch were provided in all of these cases except C-00-188 and C-00-253. (Testimony of Mr. Kebede pp. 79–87; informal complaint files C-00-188 and C-00-253) However, AT-N provided tapes to

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<sup>2</sup> The Consumer Advocate did not include C-00-115, C-00-238, C-00-248, and C-00-255 in Count 1 of the Request for Formal Complaint Proceedings, and did not add them later to the list of cases in which AT-N filed a late response. Therefore, they will not be considered in determining the appropriate penalty to be assessed for violations of 199 IAC 6.8(2).

the Consumer Advocate as a result of data requests in this formal complaint case, and not to Board staff in the informal proceeding as required by 199 IAC 6.8(2) in the following cases: C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, and C-00-445. (Testimony of Mr. Kebede, pp. 84 – 85; informal complaint files C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, and C-00-445)

AT-N filed no response in the following cases<sup>3</sup>: C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458. (Testimony of Mr. Kebede pp. 32, 54; informal complaint files C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458) In each case, a copy of the complaint was sent to AT-N's correct business address and a response was requested pursuant to 199 IAC 6.8(2).

In Count I of the request for formal complaint proceedings filed September 13, 2000, the Consumer Advocate alleged AT-N had repeatedly failed to respond to Board inquiries regarding the listed complaints in a timely manner in violation of 199 IAC 6.8(2) in 26 cases. Eight additional cases were added by testimony of Mr. Ted Drennan. (Tr. p. 32) (Mr. Drennan's testimony was adopted by Mr. Kebede after Mr. Drennan left the Consumer Advocate. Tr. pp. 24, 42, 57) (See order issued January 4, 2001, allowing the addition of the eight cases.)

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<sup>3</sup> AT-N filed no response in C-00-340. However, the complaint was not sent to AT-N, and therefore this will not be regarded as a violation.

The evidence in the record shows that AT-N failed to respond to Board inquiries in a timely manner in violation of 199 IAC 6.3(3) or 6.8(2)<sup>4</sup> in 33 of the 34 complaint cases as alleged by the Consumer Advocate<sup>5</sup>: C-00-95, C-00-137, C-00-141, C-00-150, C-00-151, C-00-153, C-00-158, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-253, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458. (Testimony of Mr. Kebede; informal complaint files C-00-95, C-00-137, C-00-141, C-00-150, C-00-151, C-00-153, C-00-158, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-253, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, C-00-340, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458) AT-N has shown a pattern of violation of 199 IAC 6.3(3) and 6.8(2).

In Count II of the request for formal complaint proceedings, the Consumer Advocate alleged AT-N slammed customers in each of 29 cases: C-00-95, C-00-112, C-00-115, C-00-137, C-00-141, C-00-150, C-00-151, C-00-168, C-00-174<sup>6</sup>, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-238, C-00-248, C-00-253, C-00-255, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, and C-00-340. Eight additional slamming cases

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<sup>4</sup> The violation is of 199 IAC 6.3(3) in C-00-141, C-00-153, and C-00-158, the non-slamming complaints. AT-N violated 199 IAC 6.8(2) in the remainder of the cases.

<sup>5</sup> No violation found for C-00-340.

were added through the testimony of Mr. Ted Drennan (adopted by Mr. Kebede): C-00-366, C-00-368, C-00-387<sup>7</sup>, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458.

C-00-141 is not a slamming complaint. As stated above, notice of the complaint was not sent to AT-N in C-00-340. Therefore, no violation of the slamming statutes and rules is found in C-00-141 and C-00-340.

Once a customer filed a complaint that AT-N had changed its telecommunications service provider without the customer's permission, and the complaint was forwarded to AT-N, AT-N was required to file proof of verification of the customer's authorization for the change in service or a statement that AT-N did not have such proof. 199 IAC 6.8(2). The acceptable forms for the proof of verification are contained in 199 IAC 22.23(2), which states a telecommunications service provider may not submit a preferred carrier change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with one of three ways listed in the rule. Proof of verification of the customer's authorization may be in one of the three forms listed in rule 22.23(2): 1) written; 2) electronic; or 3) oral if the oral authorization was obtained by an appropriately qualified independent third party. Iowa Code 476.103(3)(a)(3); 199 IAC 22.23(2)"a". AT-N filed tapes (although not within the required ten-day time period) that it alleged showed such proof in each of the slamming cases except C-

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<sup>6</sup> The request erroneously lists the number as C-00-173.

<sup>7</sup> The testimony erroneously refers to C-00-386. Tr. p. 32.

00-188 and C-00-253. (Testimony of Mr. Kebede pp. 34 - 36, 79 – 87; OCA Exhibit 2; informal complaint files C-00-95, C-00-112, C-00-115, C-00-137, C-00-150, C-00-151, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-238, C-00-248, C-00-253, C-00-255, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, and C-00-340, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458) However, AT-N provided tapes to the Consumer Advocate as a result of data requests in this formal complaint case, and not to Board staff as required by 199 IAC 6.8(2) in the following cases: C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, and C-00-445. (Testimony of Mr. Kebede, pp. 84 – 85; informal complaint files C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, and C-00-445)

Since AT-N used the third-party verification procedure as its method, the verification tape had to include "clear and conspicuous confirmation that the customer has authorized a preferred carrier change." 199 IAC 22.23(2)"a"(3). None of the tapes contain such clear and conspicuous confirmation. (Verification tapes; OCA Exhibit 1, Schedule C; OCA Exhibit 2; OCA Exhibit 4) Verifications must be maintained for at least two years from the date the change in service is alleged. 199 IAC 22.23(2)"a."

The tapes are completely deficient. (Verification tapes; OCA Exhibit 1, Schedule C; OCA Exhibit 2; OCA Exhibit 4) The customers were never asked whether they chose AT-N as their long distance service provider. The customers

were only asked "Are you authorized to choose America's Tele-Network as your long distance and local long distance provider?" This is clearly inadequate. The FCC ruled in 1999 that asking a customer if he or she is authorized to request a carrier change does not produce clear and conspicuous confirmation that the customer is actually authorizing a carrier change request. In the Matter of America's Tele-Network Corp.: Notice of Apparent Liability for Forfeiture and Order, No. FCC 01-87, File No. EB-00-TC-164 (released March 13, 2001), citing Coleman Enterprises, Inc., d/b/a Local Long Distance, Inc., Notice of Apparent Liability for Forfeiture, 14 FCC RCD 13786 (1999). As the FCC stated in the AT-N case, asking the customer whether he or she is authorized to choose AT-N "merely elicits confirmation that ATNC<sup>8</sup> is speaking to someone with authority to request a change, not whether the consumer authorizes a change." Id.

Furthermore, when the customer is asked whether he or she is authorized to choose AT-N, the customer is directed to answer "yes" to the question. This is unacceptable. In the Matter of America's Tele-Network Corp.: Notice of Apparent Liability for Forfeiture and Order; No. FCC 01-87, File No. EB-00-TC-164, p. 9 (FCC March 13, 2001) (hereinafter, AT-N FCC March 13, 2001 Order).

With its prefiled testimony filed on December 15, 2000, AT-N submitted what it alleged to be a verification script used by its third-party verifier. (12/15/00 prefiled testimony pp. 2–3, Schedule C, p. C-6) The beginning of this script contains the

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<sup>8</sup> ATNC is the abbreviation the FCC used for America's Tele-Network.

following statement: "Thank you for choosing America's Tele-Network as your long distance and local long distance provider. In addition to the \$100 check awarded once you have been online for 180 days, you have been selected to receive a free bonus gift...a 100-minute pre-paid calling card! Please answer the following questions. When finished with each of your responses, press one to continue or nine to re-record." None of the tapes contain such a statement. (Testimony of Mr. Kebede, pp. 79-81; verification tapes; OCA Exhibit 1, Schedule C; OCA Exhibit 2; OCA Exhibit 4) Even if they did, the FCC found that such a statement "merely conveys ATNC's hope or presumption that the consumer has authorized a change. This clause does not directly elicit the consumer's confirmation that he actually intends to authorize a carrier change." AT-N FCC March 13, 2001 Order, p. 8.

Although AT-N alleges it used a third-party verifier, none of the tapes contain any identification that there is a third-party verifier, or the identity of the verification company. (Testimony of Mr. Kebede, p. 35; verification tapes; OCA Exhibit 1, Schedule C; OCA Exhibit 2; OCA Exhibit 4) The verification process is supposed to be separate from the telemarketing call, but in a number of the tapes it appears the telemarketer remains on the line and coaches the customer in responding to questions. (Testimony of Mr. Kebede, p. 35; verification tapes; OCA Exhibit 1, Schedule C; OCA Exhibit 2; OCA Exhibit 4) We agree with the FCC when it found AT-N's verification process to be deficient in AT-N FCC March 13, 2001 Order.

The verification script provided by AT-N in this case is the same as the verification script found to be deficient by the FCC. AT-N FCC March 13, 2001

Order. As is the case in the Iowa tapes, the FCC found that none of the tapes submitted by AT-N followed the verification script. AT-N FCC March 13, 2001 Order, p. 7. As the FCC stated, "the verification script is void of any 'clear and conspicuous confirmation,' *i.e.*, an unambiguous, definitive, direct response from the customer that he or she is confirming a request that ATNC provide telephone service. Such basic deficiencies raise serious questions as to the legitimacy of ATNC's purportedly verified change orders. These deficiencies are made even more serious by ATNC's apparent failure to follow its defective script." AT-N FCC March 13, 2001 order, p. 9.

AT-N's verification tapes do not meet the requirements of Iowa Code § 476.103(3) (2001) and 199 IAC 22.23(2). The evidence shows that AT-N violated Iowa Code § 476.103 (2001) and 199 IAC 22.23 by causing unauthorized switches of long distance telecommunications providers to 35 Iowa customers. (Testimony of Mr. Kebede; verification tapes; OCA Exhibit 1, Schedule C; OCA Exhibit 2; OCA Exhibit 4; informal complaint files C-00-95, C-00-112, C-00-115, C-00-137, C-00-150, C-00-151, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-238, C-00-248, C-00-253, C-00-255, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458)

## **B. Appropriate Penalties**

The Consumer Advocate argues that appropriate penalties for the Count I and Count II violations should include: 1) the assessment of civil penalties pursuant to Iowa Code § 476.103(4)(a) and 199 IAC 22.23(5)"a" in the maximum allowable



amount for each violation; 2) an assessment of damages in accordance with the proposed resolutions pursuant to Iowa Code § 476.103(3)(d) and 199 IAC 22.23(5)"f"; 3) the issuance of an order prohibiting any service provider from billing charges to residents of Iowa on behalf of AT-N pursuant to Iowa Code § 476.103(5)(a) and 199 IAC 22.23(6)"a"; and 4) the issuance of an order prohibiting certified local exchange service providers in Iowa from providing exchange access services to AT-N pursuant to Iowa Code § 476.103(5)(b) and 199 IAC 22.23(6)"b". (Tr. pp. 18-21; Request for Formal Complaint Proceedings) The Consumer Advocate further argues that AT-N and John W. Little should be held jointly liable for the civil penalty and any damages assessed. (Tr. p. 21)

Iowa Code § 476.103(4)(a) (2001) provides that a telecommunications service provider who violates a provision of the anti-slamming statute, a rule adopted pursuant to the anti-slamming statute, or an order lawfully issued by the board pursuant to the anti-slamming statute, is subject to a civil penalty of not more than ten thousand dollars per violation. The section further provides that each violation is a separate offense. Iowa Code § 476.103(4)(a) (2001). 199 IAC 22.23(5)"a" contains the same provisions.

AT-N is a service provider pursuant to Iowa Code § 476.103(4)(a) (2001) and 199 IAC 22.23(5)"a." Rule 199 IAC 6.8(2) is a rule of the Board adopted pursuant to Iowa Code § 476.103 (2001). Rule 199 IAC 6.3(3) is not. Therefore, the three violations of 199 IAC 6.3(3) cannot form the basis for civil penalties pursuant to Iowa

Code § 476.103(4)(a) (2001) and 199 IAC 22.23(5)"a." Rule 199 IAC 22.23 is also a rule of the Board adopted pursuant to Iowa Code § 476.103 (2001).

AT-N failed to respond to Board inquiries in a timely manner in violation of 199 IAC 6.8(2) in 30 slamming complaint cases charged by the Consumer Advocate. AT-N violated Iowa Code § 476.103 (2001) and 199 IAC 22.23 by causing unauthorized switches of long distance telecommunications providers to 35 Iowa customers. Therefore, if the maximum amount per violation were levied, AT-N would be subject to a civil penalty in the amount of \$650,000.

Iowa Code § 476.103(4)(b) (2001) and 199 IAC 22.23(5)"b" state that a civil penalty may be compromised by the Board. The sections also state that in determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

AT-N has not requested a compromise of the amount of the penalty. AT-N did not appear at the hearing. Nevertheless, the listed factors will be considered to determine whether the civil penalty should be reduced from the maximum.

In an order issued February 26, 2001, AT-N was ordered to file prefiled testimony and documentary evidence regarding the factors in Iowa Code §§ 476.103(4)(b) and (5) (2001). In providing evidence regarding "the size of the service provider," AT-N was ordered to submit evidence showing: 1) when it started

doing business in Iowa; 2) the number of customers it has in Iowa; 3) AT-N's gross revenues from Iowa customers in each year it has been doing business in Iowa; 4) corporate gross revenues, including subsidiaries, and including all states in which it does business; and 5) the most recent annual report. AT-N was also ordered to provide evidence showing the dates it received the complaints and the dates it reimbursed the customers. AT-N never complied with this order. The Consumer Advocate was also ordered to provide evidence regarding the section 476.103(4)(b) and (5) issues in the same order. The Consumer Advocate complied. (Testimony of Mr. Kebede, tr. p. 58)

AT-N provided a customer list of 12,000 for calendar years 1999 and 2000 to the Iowa Attorney General, and reported a list of approximately 1,900 active customers in Iowa as of November 30, 2000. (Testimony of Mr. Kebede, p. 58)

The only financial information in the record regarding AT-N was provided to the Consumer Advocate by AT-N in response to data requests. (Testimony of Mr. Kebede, p. 59) The information was originally filed as temporarily confidential by the Consumer Advocate pursuant to a protective agreement signed by the parties. (Order issued May 17, 2001) AT-N was ordered to file a request for permanent confidential treatment, if it wished to do so, by May 29, 2001. AT-N did not file such a request, and pursuant to the May 17, 2001 order, the information is considered to be a public document and is treated as such.

AT-N provided an unaudited financial report prepared by John W. Little for calendar year 2000, and a copy of its 1999 U.S. corporate income tax return.

(Testimony of Mr. Kebede, p. 59; OCA Exhibit 3, Schedules B and C) Mr. John W. Little, president and sole shareholder/director/officer of AT-N, prepared AT-N's 1999 tax return. (OCA Exhibit 3, Schedule C) AT-N did not respond to the Consumer Advocate's data requests asking for copies of 2000 U.S. and Iowa tax returns, and 2001 quarterly reports. (Testimony of Mr. Kebede, pp. 58-59; OCA Exhibit 3, Schedule D) Although the financial information provided is suspect because AT-N is not credible (see discussion below), the financial statements are unaudited, Mr. Little prepared AT-N's tax return, and AT-N failed to provide additional information as ordered, it is the only financial information available and will be considered in assessing AT-N's size.

According to AT-N's 1999 tax return, AT-N had gross revenues or sales of \$34,762,648. (Testimony of Mr. Kebede, pp. 59-60; OCA Exhibit 3, Schedule C) According to the 1999 tax return, AT-N had total assets of \$10,779,636, of which \$1,024,711 was cash. (Testimony of Mr. Kebede, pp. 59-60; OCA Exhibit 3, Schedule C) According to the 1999 tax return, AT-N's total income before deductions was \$12,468,818. (Testimony of Mr. Kebede, pp. 59-60; OCA Exhibit 3, Schedule C) According to the return, AT-N's total deductions were \$11,655,596, which included compensation to Mr. Little of \$259,062, salaries and wages of \$2,989,061, and bad debts of \$5,569,811. (Testimony of Mr. Kebede, pp. 59-60; OCA Exhibit 3, Schedule C) The company's taxable income is shown on the return as \$813,222. (Testimony of Mr. Kebede, pp. 59-60; OCA Exhibit 3, Schedule C) Although the tax return shows a net operating loss deduction equivalent to its taxable

income, the FCC has ruled that the fact that a business might be operating at a loss does not in and of itself indicate the business cannot afford to pay the forfeiture when gross revenues are sufficiently large. In the Matter of Coleman Enterprises, Inc., File No. ENF 99-09, FCC 01-154, Order on Reconsideration (FCC May 8, 2001). It should also be noted that the fact that AT-N claimed the net operating loss deduction on its 1999 federal tax return does not mean that AT-N was operating at a loss in 1999 or in any subsequent year.

According to AT-N's unaudited 2000 financial statement, AT-N had total income of \$34,633,611.29. (Testimony of Mr. Kebede, pp. 59-60; OCA Exhibit 3, Schedule B) According to the financial statement, AT-N's total assets were \$10,176,819.12. (Testimony of Mr. Kebede, pp. 59-60; OCA Exhibit 3, Schedule B) Included in the expenses were bad debt of \$4,034,542.85, payroll expenses of \$4,190,282.68, and "remarketing and churn" of \$1,816,679.20. (Testimony of Mr. Kebede, pp. 59-60; OCA Exhibit 3, Schedule B) The unaudited net income is shown as \$226,910.01. (Testimony of Mr. Kebede, pp. 59-60; OCA Exhibit 3, Schedule B)

No detail regarding the salary and wages expense of \$4,190,282 for 2000 was provided, so it is unknown how much salary Mr. Little received. (Testimony of Mr. Kebede, p. 60; OCA Exhibit 3, Schedules B and C) AT-N refused to provide individual tax returns for Mr. Little on the basis that his income is included in the corporate return. (Testimony of Mr. Kebede, p. 61)

When AT-N slammed the customers, they suffered inconvenience and expense in trying to reverse the situation. In some cases, adverse consequences to

the customer included more than the inconvenience and expense the customer should not have had to suffer. One customer attempted to make an overseas telephone call, and found she could not after having been slammed by AT-N. She stated, "The damage to me was not just a matter of inconvenience. I spent an hour on the telephone, reversing the charge, reinstating AT&T as my carrier, and having a block on further switches placed on my phone service. But, with my service interrupted for a minimum of 48 hours, I was placed in the position of having to make other arrangements to make the necessary overseas phone call that alerted me to this problem in the first place." (Informal complaint file C-00-207)

Another customer found out she had been slammed in the following way. "I tried to use my MCI calling card at work because I received an emergency call that my father was dying and I was to return a call home immediately. When I tried to use my MCI call (sic) it was invalid and an operator came on and said my number was no longer in service. I was shocked because I had used it before and had no problem; I did not realize that this ILD company<sup>9</sup> had deleted this calling card. I had to get angry with whomever I was talking to in order to get my emergency message returned about my father. This was certainly not a time in my life for this to happen, and it slowed me down in getting the emergency message, adding to the emotional stress I was already facing." (Informal complaint file C-00-328)

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<sup>9</sup> ILD is a billing agent for AT-N. AT-N was the company that changed the customer's telephone service. (Informal complaint file C-00-328) This case also shows that some customers could not tell that AT-N was their long distance carrier because their bills were unclear.

AT-N slammed one elderly customer repeatedly over several months, sometimes more than once per month. (Informal complaint file C-00-441)

AT-N changed 35 Iowa customers' long distance providers without the customers' authorization. In addition to slamming the customers, AT-N billed for calls not made, billed for more minutes than the actual calls, charged more than the rate promised, misrepresented itself as AT & T or Sprint, did not send a \$100 check for switching as promised, did not provide a number that could be reached for customer service, did not switch the customer back when the customer requested, refused to refund charges arising from the slamming when requested by the customer, slammed the customer multiple times, and treated the customer poorly, delayed answering, or did not answer at all when the customer attempted to call AT-N customer service. (Informal complaint files C-00-112, C-00-115, C-00-137, C-00-141, C-00-153, C-00-158, C-00-183, C-00-188, C-00-192, C-00-211, C-00-217, C-00-219, C-00-238, C-00-253, C-00-320, C-00-336, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, and C-00-458) One customer stated in his complaint filed with the Board, "The bill that we received from them is 21 cents-a-minute. Why in heaven's name would we *knowingly* switch to a long distance service that more than doubles our per minute charge?" (Informal complaint file C-00-192)

AT-N switched customers when the customers told AT-N they were not switching, but that AT-N could send literature. (Informal complaint files C-00-115, C-00-182, C-00-192, C-00-211, C-00-288, C-00-368; testimony of Mr. Kebede p. 35) When required to respond to the Board regarding the complaints, AT-N consistently

responded late, or not at all, and in all cases, provided unacceptable or no proof of authorization for the switches. (Informal complaint files; testimony of Mr. Kebede; verification tapes)

In many cases, customers did not know that AT-N was the company providing their long distance service and billing them. (Informal complaint files; testimony of Mr. Kebede, p. 33) This is because AT-N used a billing service, and the customers' bills state that charges are for ILD Teleservices, Inc. (Informal complaint files; testimony of Mr. Kebede, p. 33) The customer service number to call is for ILD, not AT-N. (Informal complaint files) The only place that "AT-N" appears on the customers' bills is in small letters at the top of the page above some of the customer's long distance calls, and there is no explanation of what the letters "AT-N" mean on the bill. (Informal complaint files)

On March 13, 2001, the FCC found that AT-N had violated federal anti-slamming statutes and rules for the same slamming activities it has exhibited in this case, and fined AT-N \$1,020,000 for the violations. AT-N FCC March 13, 2001 order. In addition, AT-N has been accused of violating anti-slamming statutes in the following states: Alabama, Arkansas, California, Florida, Indiana, Kentucky, Mississippi, Oklahoma, South Carolina, and Tennessee. (Testimony of Mr. Kebede, pp. 39 – 41; OCA Exhibit 1, Schedule A) AT-N was found guilty and fined and ordered to cease operations in Alabama and Kentucky. In the following states, AT-N entered into a settlement agreement and paid penalties or withdrew from operating in the state for alleged slamming violations, although AT-N denied guilt in the



agreements: Arkansas, California, Indiana, Mississippi, Oklahoma, South Carolina, and Tennessee. (Testimony of Mr. Kebede, pp. 39 – 41; OCA Exhibit 1, Schedule A)

AT-N has not conducted itself well in this case. One of the most troubling aspects of this conduct is that AT-N claimed not to have received notice of most of the informal complaints until receipt of the proposed resolutions or receipt of the request for formal complaint proceedings. (Answer Brief pp. 4-6, filed January 22, 2001; testimony of Mr. Kebede, pp. 68-79) As discussed in the order issued February 26, 2001, these claims are contrary to the evidence in the informal complaint files, which contain letters from AT-N acknowledging receipt of the complaints. (Informal complaint files; testimony of Mr. Kebede, pp. 68-79) AT-N/John W. Little is not a credible witness.

In addition, AT-N began by vigorously defending this case, and then apparently told its attorneys not to continue a defense and refused to participate in the case. AT-N has failed to comply with orders issued in the case and did not appear at the hearing.

Although the record is far from complete and clear, it appears that AT-N provided partial but not complete refunds to some of the customers it had slammed. (Tr. p. 16; testimony of Mr. Kebede, pp. 47-52, 81-84; OCA Exhibit 7; informal complaint files) Part of the reason the record is not complete is because AT-N refused to participate in the case. One could argue that payment of refunds to customers should be considered as a remedial action taken by the service provider

pursuant to Iowa Code § 476.103(4)(b) and 199 IAC 22.23(5)"b", and thus serve as the basis for some reduction of the civil penalty amount. The FCC ruled to the contrary In the Matter of: Coleman Enterprises, Inc., File No. ENF 99-09, FCC 01-154, Order on Reconsideration (FCC May 8, 2001). In the Coleman case, the FCC stated at page 6, "But Commission precedent *required* CEI to reimburse slammed customers for PIC-change costs, and to re-rate customer's bills to the amount the consumers would have paid their preferred carrier. The record does not establish that for every customer, CEI did more than required in terms of issuing credits. We therefore decline to find that CEI's alleged compliance with our customer re-rating policy warrants further reduction of the forfeiture amount." We will follow the reasoning of the FCC in this case, particularly since the record is so unclear with respect to the amounts of refunds provided, the record is unclear largely due to AT-N's nonparticipation, and since it is clear that AT-N did not completely reimburse all customers.

When the factors listed in Iowa Code § 476.103(4)(b) and 199 IAC 22.23 are considered, there is nothing that indicates the civil penalty should be reduced from the maximum for the 35 slamming violations. Instead, the factors support a finding that the maximum penalty per violation should be imposed. As the Kentucky Public Service Commission stated when it fined AT-N \$400,000 (the maximum allowable) for slamming 40 customers, "The Commission takes the matter of 'slamming' seriously and will not allow Kentucky's telecommunications customers to become victims of unfair business practices. ATN has acted with reckless disregard of the

laws and the rights of the citizens of Kentucky, and by this Order we demonstrate that such behavior will not be tolerated." In the Matter of: America's Tele-Network Corporation, Case No. 2000-217 (Kentucky Public Service Comm'n September 25, 2000). Furthermore, AT-N's actions damaged the competitive market for service providers through unfair competition. See Investigation of ATN, Decision No. 99-02-016, Investigation No. 98-03-039 (California Public Utilities Comm'n February 4, 1999) (1999 Cal. *PUC LEXIS* 122).

Therefore, the evidence supports a finding that AT-N should be subject to a civil penalty of the maximum of \$10,000 per violation for each of the 35 slamming violations, for a total of \$350,000. Furthermore, the evidence supports a finding that AT-N is solely liable for all damages resulting from the unauthorized changes in service pursuant to Iowa Code § 476.103(3)(d) and 199 IAC 22.23(5)"f." "Damages" means the charges directly relating to the telecommunications services provided to the customers that have appeared or may appear on the customers' bills. 199 IAC 22.23(5)"f." As discussed above, the amount of the damages cannot be determined from the record in this case. To the extent AT-N has not completely refunded the customers for all charges resulting from the slamming, it remains liable to do so.

One of the factors to be considered in determining the amount of the penalty is the gravity of the violation. Iowa Code § 476.103(4)(b) (2001); 199 IAC 22.23(5)"b." The evidence shows AT-N repeatedly (in a total of 30 cases) violated the requirement to respond to the Board within ten days in violation of

199 IAC 6.8(2). AT-N filed late responses in 22 cases. AT-N filed no response in eight cases. The ability of Board staff when investigating slamming complaints to receive timely responses is essential so staff can attempt to quickly resolve the complaints. Therefore, these violations will be regarded as very serious. However, failure to file a timely response is not as serious a violation as slamming a customer. Neither is failure to file any response at all, although failure to file any response is more serious than filing a late response. Therefore, reduction of the maximum penalty is appropriate for these violations. The evidence supports a finding that AT-N should be subject to a civil penalty of \$5,000 per violation for each of the 22 cases in which it filed a late response, and \$7,000 per violation for each of the eight cases in which it filed no response.

Therefore, the total civil penalty due for the 35 slamming violations, the 22 late responses, and the eight cases with no response, is \$516,000.

AT-N has shown a pattern of violation of the rules adopted pursuant to the anti-slamming statute, and has demonstrated by its callous disregard of the law and the rights of telephone customers that it should not be doing business in Iowa. (Testimony of Mr. Kebede; OCA Exhibits 1, 2, 3, 4, 7; informal complaint files and tapes) Therefore, an order should be issued prohibiting any other service provider from billing charges to residents of Iowa on behalf of AT-N, and prohibiting certificated local exchange providers from providing exchange access services to AT-N. Iowa Code § 476.103(5) (2001) and 199 IAC 22.23(6).

### **FINDINGS OF FACT**

1. America's Tele-Network Corp. (AT-N) is a provider of interexchange telecommunications service located in Roswell, Georgia. (OCA exhibit 6; 6/7/01 affidavit of John W. Little) John W. Little is the president and sole officer, director, and shareholder of AT-N. (Testimony of Mr. Kebede, p. 90)

2. AT-N failed to respond to Board inquiries in a timely manner in violation of 199 IAC 6.3(3) in 30 complaint cases: C-00-95, C-00-137, C-00-150, C-00-151, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-253, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458. (Testimony of Mr. Kebede; informal complaint files C-00-95, C-00-137, C-00-150, C-00-151, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-253, C-00-256, C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458)

3. AT-N repeatedly violated Iowa Code § 476.103 (2001) and 199 IAC 22.23 by causing unauthorized switches of long distance telecommunications providers to 35 Iowa customers. (Testimony of Mr. Kebede; verification tapes; OCA Exhibit 1, Schedule C; OCA Exhibit 2; OCA Exhibit 4; informal complaint files C-00-95, C-00-112, C-00-115, C-00-137, C-00-150, C-00-151, C-00-168, C-00-174, C-00-182, C-00-183, C-00-188, C-00-192, C-00-207, C-00-211, C-00-217, C-00-219, C-00-238, C-00-248, C-00-253, C-00-255, C-00-256,

C-00-284, C-00-288, C-00-319, C-00-320, C-00-328, C-00-336, C-00-366, C-00-368, C-00-387, C-00-407, C-00-432, C-00-441, C-00-445, and C-00-458)

4. AT-N has shown a pattern of violation of the rules adopted pursuant to the anti-slamming statute and has callously disregarded the law and the rights of telephone customers in Iowa. (Testimony of Mr. Kebede; OCA Exhibits 1, 2, 3, 4, 7; informal complaint files and tapes)

### CONCLUSIONS OF LAW

1. Iowa Code § 476.103 (2001) states that the Board shall adopt rules prohibiting an unauthorized change in telecommunications service, and the rules shall be consistent with Federal Communications Commission (FCC) rules regarding procedures for verification of customer authorization of a change in service.

2. The Board has adopted such rules at 199 IAC 6.8 and 22.23.

3. The procedures for handling slamming complaints are contained at 199 IAC 6.8. For each slamming complaint, AT-N was required to file a response, including proof of verification, within ten days of the date the complaint was forwarded. 199 IAC 6.8(2). This means the response had to have been **received** by the Board within ten days of the date the complaint was forwarded. 199 IAC 6.8(2). AT-N violated this rule in 30 cases.

4. Once a customer filed a complaint that AT-N had changed its telecommunications service provider without the customer's permission, and the complaint was forwarded to AT-N, AT-N was required to file proof of verification of

the customer's authorization for the change in service or a statement that AT-N did not have such proof. 199 IAC 6.8(2).

5. The acceptable forms for the proof of verification are contained in Iowa Code § 476.103(3) and 199 IAC 22.23(2), which state a telecommunications service provider may not submit a preferred carrier change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with one of three ways listed in the rule. Proof of verification of the customer's authorization may be in one of the three forms listed in rule 22.23(2): 1) written; 2) electronic; or 3) oral if the oral authorization was obtained by an appropriately qualified independent third party. Iowa Code 476.103(3)(a)(3) (2001); 199 IAC 22.23(2)"a."

6. Since AT-N used the third-party verification procedure as its method, the verification tape had to include "clear and conspicuous confirmation that the customer has authorized a preferred carrier change." 199 IAC 22.23(2)"a"(3). The verification tapes in every case do not contain verification that the customer authorized the switch. (Verification tapes; OCA Exhibit 1, Schedule C; OCA Exhibit 2; OCA Exhibit 4)

7. AT-N's verification tapes do not meet the requirements of Iowa Code § 476.103(3) (2001) and 199 IAC 22.23(2).

8. Iowa Code § 476.103(4)(a) (2001) provides that a telecommunications service provider who violates a provision of the anti-slamming statute, a rule adopted pursuant to the anti-slamming statute, or an order lawfully issued by the board

pursuant to the anti-slamming statute, is subject to a civil penalty of not more than ten thousand dollars per violation. The section further provides that each violation is a separate offense. Iowa Code § 476.103(4)(a) (2001). 199 IAC 22.23(5)"a" contains the same provisions.

9. AT-N is a service provider pursuant to Iowa Code § 476.103(4)(a) (2001) and 199 IAC 22.23(5)"a."

10. AT-N failed to respond to Board inquiries in a timely manner in violation of 199 IAC 6.8(2) in 30 slamming complaint cases charged by the Consumer Advocate. AT-N violated Iowa Code § 476.103 (2001) and 199 IAC 22.23 by causing unauthorized switches of long distance telecommunications providers to 35 Iowa customers.

11. Iowa Code § 476.103(4)(b) (2001) and 199 IAC 22.23(5)"b" state that a civil penalty may be compromised by the Board. The sections also state that in determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

12. When the factors listed in Iowa Code § 476.103(4)(b) and 199 IAC 22.23 are considered, there is nothing that indicates the civil penalty should be reduced from the maximum for the 35 slamming violations. Instead, the factors support a finding that the maximum penalty per violation should be imposed.



13. The evidence supports a finding that AT-N should be subject to a civil penalty of the maximum of \$10,000 per violation for each of the 35 slamming violations, for a total of \$350,000. Furthermore, the evidence supports a finding that AT-N and John W. Little, AT-N's president and sole officer/director/shareholder, are jointly and severally liable for all damages resulting from the unauthorized changes in service pursuant to Iowa Code § 476.103(3)(d) and 199 IAC 22.23(5)"f." "Damages" means the charges directly relating to the telecommunications services provided to the customers that have appeared or may appear on the customers' bills. 199 IAC 22.23(5)"f." As discussed above, the amount of the damages cannot be determined from the record in this case. To the extent AT-N has not completely refunded the customers for all charges resulting from the slamming, it remains liable to do so.

14. When the gravity of the violation factor is considered in determining the amount of the penalty pursuant to Iowa Code § 476.103(4)(b) (2001) and 199 IAC 22.23(5)"b," the 30 violations of the requirement to respond to the Board within ten days in violation of 199 IAC 6.8(2) should not be subject to the same penalty as the slamming violations. While the violations are serious, because the ability of Board staff when investigating slamming complaints to receive timely responses is essential so staff can attempt to quickly resolve the complaints, they are not as serious a violation as slamming a customer. Therefore, reduction of the maximum penalty is appropriate for these violations. The evidence supports a finding that AT-N should be subject to a civil penalty of \$5,000 per violation for each

of the 22 cases in which it filed a late response, and \$7,000 per violation for each of the eight cases in which it filed no response, for a total of \$166,000. AT-N and John W. Little, president and sole officer/director/shareholder, are jointly and severally liable for this penalty.

15. AT-N has shown a pattern of violation of the rules adopted pursuant to the anti-slamming statute, and has demonstrated by its callous disregard of the law and the rights of telephone customers that it should not be doing business in Iowa. Therefore, an order should be issued prohibiting any other service provider from billing charges to residents of Iowa on behalf of AT-N, and prohibiting certificated local exchange providers from providing exchange access services to AT-N. Iowa Code § 476.103(5) (2001) and 199 IAC 22.23(6).

**IT IS THEREFORE ORDERED:**

1. The motion to withdraw filed by AT-N's attorneys is hereby granted.
2. AT-N's December 15, 2000 prefiled testimony of Mr. John W. Little and exhibits (Schedules A–F) and any alleged factual information in the answer brief filed by AT-N on January 22, 2001 may not be used in support of AT-N, its positions, its allegations, or its arguments. The information may be used against AT-N, such as in assessments of AT-N's credibility and culpability. Therefore, the information will not be stricken from the record, but are only used for those limited purposes.
3. Pursuant to Iowa Code § 476.103(4) (2001), AT-N is hereby ordered to pay a civil penalty in the amount of \$516,000 for the 35 slamming violations, the 22 late responses, and the eight cases with no response. AT-N and John W. Little,

president and sole officer/director/shareholder, are hereby jointly and severally liable for this civil penalty.

4. If this order becomes the final order of the Board, payment will be due as of the date the order becomes the final order of the Board, and is payable to the Board, to be forwarded by the Acting Executive Secretary to the State Treasurer of Iowa. Iowa Code § 476.103(4)(c) (2001).

5. AT-N and John W. Little, president and sole officer/director/shareholder, are jointly and severally liable for all damages resulting from the unauthorized changes in service pursuant to Iowa Code § 476.103(3)(d) and 199 IAC 22.23(5)"f." They remain liable for all amounts not yet refunded to the customers.

6. All service providers are prohibited from billing charges to residents of Iowa on behalf of AT-N, John W. Little, or any company in which John W. Little holds a majority ownership interest. Iowa Code § 476.103(5) (2001) and 199 IAC 22.23(6).

7. All certificated local exchange providers are prohibited from providing exchange access services to AT-N, John W. Little, or any company in which John W. Little holds a majority ownership interest. Iowa Code § 476.103(5) (2001) and 199 IAC 22.23(6).

8. AT-N must notify all current Iowa customers of the decision in this case, that AT-N is no longer doing business in the state, and assist all Iowa customers in transferring to another service provider. AT-N and John W. Little,

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president and sole officer/director/shareholder, are jointly and severally liable for all  
resulting PIC-change charges.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Acting Executive Secretary

Dated at Des Moines, Iowa this 1<sup>st</sup> day of August, 2001.

IN RE: IOWA DEPT. OF JUSTICE OFFICE OF CONSUMER ADVOCATE V.  
AMERICA'S TELE-NETWORK CORP. AND JOHN W. LITTLE  
DOCKET NO. FCU-00-6

List of Prehearing Filings and Orders

9/13/00	Request for Formal Complaint Proceedings filed by the Office of Consumer Advocate
10/18/00	Entry of Appearance filed by America's Tele-Network Corp. and John W. Little
10/18/00	Motion for Admission to Practice Under Rule 113 of the Iowa Rules of Court filed by America's Tele-Network Corp. and John W. Little
10/18/00	Answer filed by America's Tele-Network Corp. and John W. Little
11/20/00	Order Docketing Complaint, Establishing Procedural Schedule and Granting Permission to Appear issued by Utilities Board
12/01/00	Direct Testimony and Exhibits filed by the Office of Consumer Advocate
12/15/00	Rebuttal Testimony and Exhibits filed by America's Tele-Network Corp.
12/15/00	Motion to Strike filed by America's Tele-Network Corp.
12/15/00	Motions for Leave to Depose Complainants, Issue Subpoenas, and Continuance filed by America's Tele-Network Corp.
12/19/00	Order Assigning to Administrative Law Judge issued by Utilities Board
12/26/00	Response to Objection and Resistance to Motion to Strike filed by the Office of Consumer Advocate
12/28/00	Resistance to Application for Leave to Depose, Issuance of Subpoena Duces Tecum, and Continuance filed by the Office of Consumer Advocate
12/29/00	Application for Separate Adjudication of Law Points filed by the Office of Consumer Advocate

01/04/01	Order Granting Motion for Continuance and Requesting Information and Partial Ruling on Motion to Strike issued by Utilities Board
01/22/01	Response to Order Directing Parties to Respond to Questions filed by the Office of Consumer Advocate
01/22/01	Responsive Testimony filed by the Office of Consumer Advocate
01/22/01	Resistance to Application for Separate Adjudication of Law Points and Answer Brief filed by America's Tele-Network Corp.
01/23/01	Request for Permission to Amend Response to Questions filed by the Office of Consumer Advocate
01/23/01	Amended Responsive Testimony filed by the Office of Consumer Advocate
02/07/01	Order Granting Request for Permission to Amend Response to Questions issued by Utilities Board
02/26/01	Order Regarding Motions to Strike, to Depose Complainants, Issue Subpoenas, Application for Separate Adjudication of Law Points, and Establishing Procedural Schedule and Notice of Hearing issued by Utilities Board
03/06/01	Notification Concerning Underlying Informal Complaints filed by the Office of Consumer Advocate
03/19/01	Motion to Withdraw Appearance and Representation as Counsel filed by the attorneys for America's Tele-Network Corp. and John W. Little
03/26/01	Statement filed by counsel for America's Tele-Network Corp. and John W. Little
04/02/01	Conditional Objection to Motion to Withdraw Appearance and Representation filed by the Office of Consumer Advocate
04/16/01	Order Regarding Motion to Withdraw issued by Utilities Board
04/20/01	Statement in Support of Motion to Withdraw and Counsel's Amended Motion to Withdraw Appearance and Representation filed by counsel for America's Tele-Network Corp. and John W. Little

05/02/01	Response to Amended Motion to Withdraw Appearance and Representation and Withdrawal of Objection filed by the Office of Consumer Advocate
05/08/01	Order Regarding Motion to Withdraw issued by Utilities Board
5/15/01	Letter filed by an attorney for America's Tele-Network Corp. and John W. Little
05/15/01	Additional Testimony and Exhibit filed as CONFIDENTIAL by the Office of Consumer Advocate
05/17/01	Order Regarding Consumer Advocate Testimony and Confidential Treatment issued by Utilities Board
05/24/01	Testimony and Exhibits filed by the Office of Consumer Advocate
05/24/01	Request for Permission to Offer Additional Testimony filed by the Office of Consumer Advocate
05/31/01	Order Shortening Time for Response issued by Utilities Board
06/05/01	Amended Motion for Permission to Offer Additional Testimony filed by the Office of Consumer Advocate
06/07/01	Order Granting Motion for Permission to Offer Additional Testimony issued by Utilities Board
06/07/01	Affidavit filed by AT-N and John W. Little

IN RE: IOWA DEPT. OF JUSTICE OFFICE OF CONSUMER ADVOCATE V.  
AMERICA'S TELE-NETWORK CORP. AND JOHN W. LITTLE  
DOCKET NO. FCU-00-6

List of Exhibits

Attached to December 1, 2000 OCA's prefiled testimony:

- OCA Exhibit 1      black binder containing Schedules A – E:  
Schedule A: actions against AT-N in other jurisdictions  
Schedule B: complaints against AT-N received by Iowa Attorney General  
Schedule C: transcripts of tapes provided by AT-N in C-00-328, C-00-182, and C-00-256  
Schedule D: AT-N third-party verification information provided by AT-N to the Iowa Attorney General  
Schedule E: selected pages of AT-N's tariff on file with the FCC
- OCA Exhibit 2      CD index with two CDs and information regarding third-party verifications and refunds provided by AT-N to the OCA

Attached to May 15, 2001 OCA's prefiled testimony:

- OCA Exhibit 3      Schedules A – D:  
Schedule A: Iowa Attorney General's civil investigative demand and AT-N's supplemental response  
Schedule B: AT-N's Balance Sheets as of 3/31/00 and 12/31/00; AT-N's Profit and Loss statements January – December 2000 and January – March 2000  
Schedule C: confidentiality agreement; AT-N's 1999 U.S. income tax return  
Schedule D: OCA data requests 25 and 26 asking for Iowa and U.S. 2000 income tax returns and 2001 quarterly reports

Attached to May 24, 2001 OCA's prefiled testimony

- OCA Exhibit 4      Schedule A: transcripts of verification tapes provided by AT-N



Received at hearing:

- |               |   |
|---------------|---|
| OCA Exhibit 5 | Affidavit of Ms. Judi Cooper  |
| OCA Exhibit 6 | Telecommunications Service Provider Registration<br>filed by AT-N on June 15, 2000  |
| OCA Exhibit 7 | AT-N's response to OCA Data Request No. 23<br>(customer refunds and charges)  |
| OCA Exhibit 8 | AT-N's response to OCA Data Request No. 9<br>(customer calling plans and location in tariff)<br>(including AT-N's FCC Tariff No. 1) |